IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

:: ORDER ::

S.B. CIVIL WRIT PETITION NO.2449/2004-MOHD ASLAM VS. SHAMBHOO SINGH & OS. UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 7.4.2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

REPORTABLE

Mr.Suresh Srimali, for the petitioner.
Mr.Arvind Samdariya, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the trial court dated 29th Nov., 2003 by which the trial court dismissed the petitioner's two applications, one for taking on record the

expert opinion, which petitioner obtained himself from hand writing expert Ramesh Thakkar and prayed that in case there is any objection of the plaintiff about the report of said Ramesh Thakkar as it was obtained not with the prior leave of the court then the court may permit the hand writing expert to take photographs of the relevant documents so that fresh report may be brought on record by the petitioner-defendant. The petitioner's second application was also with respect to the other documents, but for the same purpose of obtaining expert report, that too, was dismissed by the trial court.

According to learned counsel for the petitioner-defendant, the plaintiff-respondent was allowed to obtain the hand writing expert report for the document and to rebut that document, the report of another hand writing expert is necessary and without that opinion, the petitioner will not be able to sufficiently rebut the expert opinion, which has been submitted at the instance of the plaintiff.

The trial court observed that since the documents, which have been relied upon by the petitioner are not containing the signature admitted by the executant or by the plaintiff, therefore, the signature cannot be compared. The trial court also observed that the plaintiff himself obtained Photostat copy

of the document and got the comparison of the signature through his expert, which was not in accordance with the relevant rules and, therefore, both the applications of the petitioner were dismissed.

Learned counsel for the non-petitioner submits that the petitioner did not challenge the hand writing expert report, which was submitted in the court and unless that report is challenged and remains in force, no second report can be summoned. It is also submitted that the petitioner has other mode to rebut the expert opinion, which is already on record.

I considered the submissions of learned counsel for the parties. At the outset it can be said that the trial court failed to exercise jurisdiction vested in it while deciding the two applications of the petitioner filed for obtaining the expert opinion for the signatures on relevant documents. The trial court allowed plaintiff to obtain the expert opinion for the one document, but denied the relief to the defendant, who wants to rebut the expert opinion by expert opinion. Every party to the suit has right to produce the relevant evidence before the court subject to procedure as provided in law. The opinion of the expert is admissible in evidence. When one party is granted permission to produce the expert opinion for hand writing or

thumb impression in dispute then the best way to rebut the expert opinion is by another expert opinion. The court has jurisdiction to consider the expert opinion in the light of the evidence produced before the court and, thereafter, either to accept or reject the expert opinion. For the purpose of accepting or rejecting the opinion of the expert, the court can examine the one expert opinion report and compare the report with another report to find out, which is more reliable report. Ones a permission is granted to one party to obtain expert opinion then normally on request in time, the same permission is required to be given to the party contesting the report unless the court reaches to the conclusion that the contesting party by his own conduct disentitled himself for the relief.

The trial court in this case, even went to the extent of observing that at this stage, there is no reason to disbelieve the expert opinion dated 30th June, 2003 (obtained and produced by the plaintiff). The trial court at this stage, could not have observed so because it is pre-judging a piece of evidence during trial. Even otherwise if the trial court had the prima facie opinion as mentioned above, then to meet with this prima facie finding of the trial court, the defendant had no option but to request for examination of hand writing or thumb impression in question from another report so that he may meet with the

evidence in the form of expert opinion produced by the plaintiff by producing another expert opinion so that what has been found by the trial court at this stage, as prima facie may not become the ultimate decision on the expert opinion in absence of any other expert opinion.

The trial court further committed serious error of law in observing that since the defendant has not submitted objection on the expert opinion dated 30th June, 2003, therefore, the petitioner-defendant cannot be allowed to obtain the expert opinion. The approach of the trial court was wrong because of the reason that the trial court could not have decided such objection during trial. The expert opinion is evidence and evidence are not assessed, accepted or rejected during trial. It appears that the trial court observed so as though the trial court was considering the Commissioner's report in any Misc. proceedings to be Commissioner's report under Order 39 Rule 7 CPC.

Assuming for the sake of argument that the defendant should have submitted objection against the expert opinion even then for that purpose the defendant could have raised the objection after satisfying himself about the credibility of the report and for that purpose also,he would have certainly needed

the another expert opinion for the document in question. It cannot be presumed that the defendant intended to rebut the opinion falsely or knowing it well that the opinion is correct. Therefore, the defendant has a right to question the opinion after satisfying himself with the report produced by the expert is wrong and for that purpose, the relevant would be the another opinion.

The trial court went wrong when the trial court observed that the thumb impression, which are not admitted, cannot be compared with the thumb impression of the document produced in evidence. The document over which it is alleged that the thumb impressions of the same executant is there, could have bee proved by producing evidence and the court could have examined that whether other documents containing the thumb impression or hand writing have been proved to be of the same very executant whose signatures are or are not on the document in question and which are sought to be proved or disproved. It is not the blanket rule that the signatures can be compared with the signatures, which are admitted signatures and cannot be compared with the signatures, which are proved to be signature of the same executant.

In view of the above, the writ petition of the petitioner

deserves to be allowed, hence allowed and the order of the trial court dated 29th Nov., 2003 is set aside. The applications filed by the petitioner Annexs. 5 and 6 both dated 22.10.2003 are allowed and the petitioner may obtain the relevant photographs through hand writing expert by following the procedure as applicable in civil suit for obtaining the photographs of the signature for comparison by the hand writing expert.

(Prakash Tatia), J.

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